

Exhibit 35

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBYN ABRAHAM,

Plaintiff,

v.

17 Civ. 5429 (KPF)

ABBY LEIGH, et al.,

Defendants.

Conference

New York, N.Y.
December 18, 2018
11:10 a.m.

Before:

HON. KATHERINE POLK FAILLA,

District Judge

APPEARANCES

ARNOLD & PORTER KAYE SCHOLER LLP
Attorneys for Plaintiff

BY: SUSAN S. HU
SUSAN L. SHIN (by telephone)

COZEN O'CONNOR
Attorneys for Defendant Abby Leigh
BY: MICHAEL BROADBENT (by telephone)

AKERMAN LLP
Attorneys for Defendants Martha Wasserman and Alan Honig
BY: IRA S. SACKS
JAMIE B. SHYMAN
MARK S. LAFAYETTE

1 (Case called)

2 MS. HU: Susan Hu from the law firm of Arnold & Porter
3 questioner on behalf of the plaintiff, Robyn Abraham.

4 MR. SACHS: Ira Sachs, Jamie Shyman, and Mark
5 Lafayette on behalf of defendants Martha Wasserman, as
6 executrix of the Estate of Dale Wasserman and Alan Honig.

7 THE COURT: Thank you.

8 MS. SHIN: Susan Shin from Arnold & Porter on behalf
9 of plaintiffs.

10 MR. BROADBENT: Your Honor, good morning. This is
11 Michael Broadbent of the law firm Cozen O'Connor appearing on
12 behalf of defendant Abby Leigh and in her capacity as the
13 executrix of the Estate of Mitch Leigh.

14 THE COURT: Thank you very much.

15 I have your 13 letters regarding discovery disputes,
16 including the one that inexplicably was submitted at 8:37 last
17 night.

18 Mr. Sachs, I am beginning with you, sir. I am going
19 to try to address these in some semblance of order.

20 Sir, you have argued to me that there is spoliation in
21 this case. I know that you know that those are very, very
22 serious allegations. I want to make sure what your position is
23 in light of the explanation provided by Ms. Abraham and her
24 attorneys, which is, as I understand it, that in or about 2014,
25 as things were looking less like the performance was going to

1 happen, that Ms. Abraham began preserving relevant materials,
2 and she did so by sending those materials to her attorneys and
3 by printing them out and saving them as PDF documents.

4 I will tell you that perhaps in 2014 I might have done
5 the very same thing. But is it that you believe it's
6 incorrect, the recitation of the timeline, or do you believe
7 that it is correct, but that it hides the ulterior motive of
8 destroying the native formats of these documents?

9 MR. SACHS: The actual answer to that, your Honor, is
10 neither. What I believe -- and it's triggered by the three
11 documents that, as I've called it, have indicia of fraud, which
12 are Exhibits 1, 2, and 3 of my November 30 letter to your
13 Honor.

14 The fact that 50 e-mails, according to plaintiff's
15 counsel, and I have absolutely no quarrel with her recitation
16 of that, I have not counted them, but that 50 e-mails are no
17 longer on servers and that they believe that it's because of a
18 GoDaddy server crash and some e-mails may have been lost, that
19 was the reason why we have not made a Rule 37 motion. It is
20 why I have not said that there has been spoliation, but I want
21 to look into the reason why there are 50 e-mails missing.

22 I served a document discovery subpoena on GoDaddy to
23 find that out. And if GoDaddy comes back and tells me that
24 there was a server crash and some number of e-mails are
25 missing, and it might be 50 or something like that, then I have

1 no issue with spoliation at all. But if they come back and
2 say, and we don't know this, and I have not seen any documents
3 relating to it, that there wasn't a server crash or there was a
4 server crash but no e-mails were lost, then we have an issue
5 still with how did 50 documents, which were on servers at some
6 point, disappear.

7 But the overarching issue that triggered this was
8 Exhibits 1, 2, 3, and the combined Exhibit 4 of my November 30
9 letter.

10 THE COURT: Which is on my screen right now.

11 MR. SACHS: If you look at Exhibit 1 and if you look
12 at the top e-mail, there is no open quote next to from R.
13 Abraham, close quote. I have looked at all 492 e-mails that
14 were produced in e-mail format rather than document or PDF
15 format in plaintiff's production. None of the e-mail format
16 documents are missing that open quote. Every one of the e-mail
17 format documents either have no quotation marks around R.
18 Abraham or both quotation marks around R. Abraham.

19 The same anomaly, and I'll call it an anomaly, because
20 I don't know how it happened, the same anomaly appears on
21 Exhibit 2 on the top e-mail and the same anomaly appears on
22 Exhibit 3 in the top e-mail.

23 The other anomaly is that these e-mails are in -- the
24 oldest e-mail is on top. That's not the way e-mail chains are.
25 And I do have, and it's one of the things I circulated, a

1 packet of selected e-mails, if I may pass up, your Honor.

2 THE COURT: You may. You have a copy for Ms. Hu.

3 MR. SACHS: This is also part of what we circulated
4 for counsel who would not be present in court when I sent the
5 additional e-mails to your Honor and to all counsel yesterday.

6 THE COURT: I received that as well, but I will have
7 the hard copies. Thank you.

8 MR. SACHS: And these are e-mails that I just printed
9 out as I was going through the production. But if you turn to
10 page ABR001112, which is an e-mail. The e-mails are in
11 chronological order. The top e-mail on that one is June 24,
12 2013.

13 THE COURT: Yes.

14 MR. SACHS: You'll see there, your Honor, that, first,
15 in the front line there is no quotation marks around R. Abraham
16 and in the second e-mail there are two quotation marks around
17 R. Abraham.

18 You will also see, your Honor, that as with e-mail
19 chains that we are all familiar with, the top e-mail is the
20 latest e-mail in the sequence and the second e-mail in the
21 chain is the earliest e-mail in the sequence.

22 I don't know how this happened, but I think that the
23 only way we can find out -- and this is what triggered my
24 curiosity, if that's the right word, to why there are 50
25 missing e-mails.

1 Because in terms of what Arnold & Porter has
2 represented as officers of this court, I believe that they
3 believe that. I believe they were told that. I don't know
4 that they know that unless they have communicated with GoDaddy,
5 but no one has said that to me, and I'd like to find out from
6 GoDaddy.

7 But with respect to the documents that have indicia of
8 fraud, Exhibits 1, 2, and 3, I think we have to find out why
9 these documents have that indicia and the only way I know how
10 to do it is to have a forensic examination of the e-mail
11 account, and it's actually one of the three e-mail accounts.
12 Not all three e-mail accounts. And plaintiff's computer.

13 There is one other --

14 THE COURT: Sir, one moment, please.

15 MR. SACHS: Surely, your Honor.

16 THE COURT: I want to make sure I understand all of
17 the bases you have for seeking forensic examination of the one
18 e-mail account. And it sounds like it is this quotation
19 anomaly and then the sorting anomaly in terms of the
20 chronological order, whether it be a regular or reverse of what
21 is usual.

22 Are there other bases that you have --

23 MR. SACHS: One other, your Honor, which is that these
24 are among the documents missing from the server. And one other
25 that I will say could be a tactical choice, but it struck me as

1 odd, the substance of the January 10 e-mail with the anomalies
2 and the January 20 e-mail with the anomalies are substantively
3 the type of document that I can't imagine would not have been,
4 given everything else that was attached to the amended
5 complaint, attached to the amended complaint with respect to
6 what Mrs. Wasserman is claimed to have done because this has
7 the statement, you have my MOLM vote for London and Broadway,
8 no conditions. The second one says something similar: Yes,
9 Robyn, you have my MOLM vote for Broadway and London.

10 It is surprising to me that these documents, if
11 counsel believed them to be accurate and not suspicious or with
12 anomalies, would have been raised either as an attachment to
13 the amended complaint or in opposition to Mrs. Wasserman's
14 motion to dismiss.

15 That's not the same level of anomaly.

16 THE COURT: I am not giving a forensic exam based on
17 the selection of exhibits for the complaint.

18 MR. SACHS: I will also say as another reason that
19 these e-mails not only do not appear in e-mail format in
20 Ms. Abraham's production, they also do not appear in
21 Ms. Wasserman's production. That's not the principal basis.
22 The principal basis are the two that you mentioned, your Honor.

23 THE COURT: One moment, please. What you are saying
24 is that Ms. Wasserman has a complete collection of documents
25 related to this case. She herself did not delete any documents

1 for any number of reasons, none of which nefarious, and you
2 can't find its match in her e-mail accounts?

3 MR. SACHS: As to the first portion of what you asked
4 me, your Honor, I don't know, and that's because I've been
5 doing this since 1974. One thing I learned fairly early on was
6 only swear for yourself. Don't swear for anyone else.

7 I will also observe that there are documents that I
8 believe once existed that are no longer in Ms. Wasserman's
9 e-mail account either, server based or printed out. I will
10 say, having spoken to Ms. Wasserman, these are the types of
11 e-mails that she would have printed out and would not have
12 deleted if they had in fact existed.

13 But I cannot answer your Honor to say that she has
14 kept everything because I do not believe she has kept
15 everything until she was sold to start saving things.

16 THE COURT: You are asking for a forensic examination
17 of the e-mail account?

18 MR. SACHS: There is one other thing that I would want
19 to mention, your Honor, which is Exhibit 4 and the two
20 documents that comprise Exhibit 4, which are from the same
21 e-mail account. There are two documents with the same re.

22 The document, which is the second document in Exhibit
23 4, ABR001251, was an e-mail format in plaintiff's production.
24 The first document in Exhibit 4, which is ABR002853, was not in
25 e-mail format. It was only in document/PDF format. They are

1 both the same date. They are both from Ms. Wasserman to
2 plaintiff. They both have the same re. One of them has a
3 single sentence, as your Honor can see. The other has five
4 additional sentences plus a postscript.

5 And the reason for the forensic examination, your
6 Honor, and the reason for the subpoena on GoDaddy all go
7 together. There are at least 50 e-mails missing from servers
8 and there are three e-mails with what I consider there to be
9 significant anomalies, plus the other pair of e-mails that make
10 no sense to have been sent on the same day by the same person
11 with the same re and repeating a portion of it and then earlier
12 adding additional text.

13 Quite frankly, I'm willing to use plaintiff's ESI
14 vendor to do the forensic examination, and we are willing to
15 pay for it. But I think the only way to find out, and maybe it
16 won't even be a way to find it out. The only way to find out
17 why these anomalies appear is to do a forensic examination.
18 The only way to find out whether a GoDaddy server crash caused
19 50 e-mails to disappear is to get documents from GoDaddy. That
20 burdens nobody in the slightest.

21 THE COURT: Wait. By the way, none of this should be
22 taken as a decision that I have made because I haven't. But if
23 it turns out that GoDaddy acknowledges server crashes and, by
24 some miracle, has a cache of documents that it can retrieve.
25 You want the documents themselves. What if they include

1 privileged materials? What if they include irrelevant
2 documents? What if they include highly personal, sensitive
3 materials?

4 My point is, I understand why you want substantiation
5 for the crash and for the possibility that e-mails were lost.
6 But I'm extremely concerned about you getting the returns the
7 of the subpoena without any opportunity for Ms. Abraham to
8 review it first.

9 MR. SACHS: I'm happy to have them look at it first,
10 your Honor. What we asked for in the subpoena, though, were
11 documents referring, relating to, or concerning or comprising a
12 server crash, a determination of which e-mails were lost, and
13 documents sufficient to identify. Not all the e-mails, but
14 documents sufficient to identify all e-mails that were lost,
15 which, from my standpoint, I was looking for. It's why we
16 asked for documents sufficient rather than all documents, a
17 schedule.

18 THE COURT: If I am GoDaddy, the easiest way to show
19 you documents that were lost and the evidence of same is to
20 give you the documents themselves. That's my concern.

21 MR. SACHS: I'm happy to have GoDaddy provide the
22 documents if they are planning on providing the documents to
23 plaintiff's counsel first.

24 THE COURT: There are so many steps in this discussion
25 that require GoDaddy to have remarkable preservation abilities,

1 because I am not sure that any of this was preserved, but
2 that's a different issue.

3 Let me understand, so I can speak meaningfully to the
4 issue with your adversary, what is this forensic examination
5 going to do? It's not going to be limited to the e-mails
6 you've identified, or is it?

7 MR. SACHS: It really is a cart and a horse issue with
8 GoDaddy.

9 The issue with the forensic examination that I'm
10 asking is focused at this point on four documents. I'm happy
11 to have them only look for those four documents and for the
12 backup or the original files relating to these three e-mails
13 with anomalies, plus the other pair or the other non e-mail
14 version of that document. That's all I want. As I said, I'm
15 happy to have plaintiff's ESI vendor do it rather than my
16 hiring my own. I'm happy to hire my own. I'm happy to have
17 their vendor do it if they trust their vendor more than they
18 trust mine.

19 THE COURT: Let me hear from the other side.

20 Ms. Hu, is it you or Ms. Shin that I'll be hearing
21 from this morning?

22 MS. SHIN: Your Honor, I would like to start, if
23 that's OK. And if I have left anything out, I'm sure Ms. Hu
24 will be happy to add.

25 THE COURT: Certainly.

1 MS. SHIN: First of all, your Honor, our position is
2 that this kind of inquiry is completely improper under the
3 circumstances. Perhaps Ms. Hu can do a better job of kind of
4 explaining all these quote/unquote anomalies, but none of them,
5 from what I can understand, is a basis for indicia of fraud.

6 I understand why they have picked out these documents
7 because they pertain to Ms. Wasserman and they are not
8 particularly great documents for them, but there are several
9 documents that have been preserved this way and that, from what
10 we can tell, no longer existed on Ms. Abraham's server. With
11 further review we have determined that it's not 50. It's more
12 like 36. I am not sure how many instances this anomaly, or
13 whatever we want to call it, with the quotations Mr. Sachs has
14 pointed out, I am not sure how many times throughout the
15 production, the documented printed out that way. One thing we
16 can do is do an analysis to figure out whether it is an anomaly
17 or whether it appeared that way every time it was printed on a
18 certain computer. I am not sure.

19 THE COURT: Ms. Shin, one moment, please. You knew
20 prior to this phone conference that one of the bases for the
21 request for a forensic examination was the placement or the
22 absence of quotation marks. Is that not correct?

23 MS. SHIN: That appeared in Mr. Sachs' letter of, I
24 believe, November 30.

25 THE COURT: So the answer to my question is yes?

1 MS. SHIN: Yes.

2 THE COURT: Did you have occasion to speak with your
3 ESI vendor about the circumstances that might cause that to
4 happen?

5 Here is what I'm getting at. It's not that tough. He
6 has identified things for me that are, as he says, anomalous.
7 You can come here today and tell me why they are not anomalies
8 by explaining how they happened. It's much less helpful to say
9 that there may be other alternate reasons. I need to have a
10 sense of what those reasons are.

11 Have you had occasion to speak to anyone about whether
12 printing in a certain way or saving in a certain way amounts or
13 would cause the issues that Mr. Sachs has identified?

14 MS. SHIN: Your Honor, these PDFs appeared as is in
15 Ms. Abraham's server when she received documents from her
16 attorneys in 2016 and '15. I asked Ms. Abraham and she said,
17 absolutely not. All I did was print them. All I did was print
18 them.

19 THE COURT: We are speaking now about Exhibits 1, 2,
20 and 3 to Mr. Sachs' letter of November 30. You are saying that
21 each of these three exhibits and perhaps -- not the fourth one,
22 but each of these three exhibits exists now only in PDF form
23 and that is what the PDF looks like. Is that correct?

24 MS. SHIN: Yes, your Honor.

25 THE COURT: Please continue.

1 MS. SHIN: I think on both the issues all we have here
2 is Mr. Sachs' assertion of that indicia of fraud. We disagree.
3 I understand that these were just printed and they were printed
4 in different forms. The same e-mail appears different times,
5 whether it was printed by Ms. Abraham or one of her counsel.
6 Sometimes they were printed landscaped. Sometimes they were
7 printed from a different computers. Sometimes they appear
8 differently. But the substance remains the same. Sometimes
9 these documents appear in the server and in the small instances
10 they don't.

11 We tried to tell Mr. Sachs that one explanation is
12 that from, what we understand, there was trouble with the
13 servers that Ms. Abraham used, the GoDaddy.com, to explain why
14 some of these do not exist anymore, but they did exist in 2014,
15 when they were preserved and printed.

16 Your Honor, pointing out these anomalous that occur is
17 not indicia of fraud. I think to be able to assert fraud with
18 any basis, there has to be more.

19 Mr. Sachs has indicated already that he is not seeking
20 any relief under Rule 37 and, therefore, this is outside the
21 scope of what is appropriate in normal discovery, in what can
22 be sought through a subpoena unless your Honor permits it.

23 But, your Honor, to the extent that Mr. Sachs is also
24 raising question as to why certain documents were selected, I
25 will tell you that when we were accepting this case and

1 drafting the complaint, we only had a small subset of documents
2 that were provided to us. Through the discovery we obtained
3 additional documents from both the prior law firm, and
4 Ms. Abraham provided the full set she printed on PDF.

5 There is no basis. There is no showing here that
6 there were documents deleted. There is no demonstration here
7 that documents were manipulated. There is just absolutely no
8 basis at all.

9 I think Mr. Sachs said the right word, that he's
10 curious, and that's fine. He has a right to be curious about
11 things that -- I am not even sure what the word is. When he
12 prints the document, there is lots of things that come up that
13 don't look the way they do necessarily when they are in their
14 native form. That is not a basis enough to start inquiring
15 outside the claims and defenses of this case to be able to
16 create a case within a case. They have just not met their
17 burden.

18 THE COURT: Ms. Shin, let me stop you for a moment,
19 please. I want the best and final explanation from you and
20 your firm as to the manner in which Ms. Abraham preserved
21 relevant documents upon coming to the realization in 2014 that
22 there may be a difference of opinion, if not a basis for
23 litigation. At that time did she have everything maintained as
24 e-mails in certain servers?

25 MS. SHIN: Yes, your Honor. At that time everything

1 he had she went through and one by one printed out every e-mail
2 that related to this case, that related to Man of La Mancha and
3 all the players, she printed them out one by one.

4 THE COURT: This is in or about 2014, is that correct?

5 MS. SHIN: Correct, your Honor.

6 THE COURT: Approximately how many e-mails did she
7 print out that she considered relevant to what is now the
8 dispute in this case?

9 MS. SHIN: I cannot answer that, your Honor. I didn't
10 go back and count that or ask her.

11 THE COURT: Can you ballpark it?

12 MS. SHIN: I can, your Honor. I can certainly go back
13 and come back and let you know.

14 THE COURT: That doesn't help me now.

15 When she took these e-mails and printed them out, did
16 she then retain them on their respective e-mail servers?

17 MS. SHIN: My understanding is she saved them on her
18 computer, and throughout the end of 2014 and '15, she sent
19 them, sometimes as an attachment, sometimes as a zip file, to
20 attorneys that she was consulting with.

21 THE COURT: As she is saving them, she is saving them
22 in PDF form, is that correct?

23 MS. SHIN: Correct, your Honor.

24 THE COURT: She saved the relevant e-mails, what she
25 perceived to be the relevant e-mails, in PDF form. She printed

1 them out so she would have a hard copy. Again, just so I'm
2 clear, did she keep them in her e-mail inboxes?

3 MS. SHIN: I don't know if she kept them in the e-mail
4 inboxes. They were in her sent boxes. They were saved in her
5 laptop that she had at the time, after she scanned them in PDF.

6 THE COURT: I'll ask the question more pointedly.
7 After she saved them and after she printed them, did she delete
8 them?

9 MS. SHIN: No, your Honor.

10 THE COURT: So, therefore, to the extent that they do
11 not exist today in native format, and this is approximately 36
12 documents, the only explanation that she has is that there were
13 one or more server crashes that would have caused her to lose
14 these e-mails?

15 MS. SHIN: Yes, your Honor. One thing that I would
16 add is, and I did this, if you Google GoDaddy crashes, there
17 are a number of things that come up about a lot of other
18 customers who experienced the same phenomenon.

19 THE COURT: I just want to make sure I'm hearing this
20 and understanding this correctly. There is no other reason
21 that Ms. Abraham can think of as to why these documents no
22 longer exist in native format other than the crashes to the
23 server. Is that correct?

24 MS. SHIN: Yes, your Honor. She certainly preserved
25 more than 36 e-mails. The 36 came up from our ability to match

1 them up with the ones that were pulled from the server itself.

2 It still exists today as well as throughout the production.

3 THE COURT: And she first learned that these documents
4 no longer existed in native format when? If it's more than one
5 day, please let me know that.

6 MS. SHIN: Yes, your Honor. It was over more than one
7 day and it wasn't any specific document. She noted that some
8 documents just weren't there anymore. This was the end of 2014
9 and then again, 2015, I understand she had called GoDaddy.com
10 to find out what happened, and she was told that they were
11 aware of the problem, that it was server wide.

12 THE COURT: Well before filing this lawsuit she was
13 aware that some of her key documents only existed in PDF form?

14 MS. SHIN: Yes, your Honor, she was.

15 THE COURT: Ms. Shin, I want to hear you, if you want
16 to add anything to the subpoena for GoDaddy. I have already
17 heard you speak about the propriety at this stage of the
18 litigation. I want to go beyond that.

19 The offer was made that you could have the returns of
20 the documents. What that means is that the only information
21 that would be obtained prior to your review of these documents
22 would be whether there was a crash, and if so, when? Is there
23 not utility for both sides in ascertaining whether and when the
24 server crashed?

25 MS. SHIN: Your Honor, our position only is that it's

1 just really improper. Mr. Sachs has alleged fraud, in our
2 opinion, very recklessly. We are very disappointed in that.
3 And I believe that this is just a way to substantiate these
4 statements that he has made in a public filing to the Court
5 without having to amend; only, in our view, trying to
6 substantiate the claims for which there is no basis whatsoever.

7 Having said that, the other concern I had is that I'm
8 just trying to defend from this case just getting bigger and
9 bigger and more burdensome. I think the cost is one matter.
10 There was also a subpoena to depose that would require us to go
11 out and defend that deposition.

12 THE COURT: Mr. Sachs walked away from the deposition
13 subpoena of GoDaddy. It was just this.

14 MS. SHIN: I understand.

15 THE COURT: That's not a cost issue. Again, I'm
16 asking you to confine your answers to the things that exist
17 today, and not things that don't.

18 MS. SHIN: Your Honor, if you could repeat your
19 question. I apologize.

20 THE COURT: It would seem to me that if your client is
21 going to make the argument in litigation in response to the
22 inevitable cross-examination question at trial that she is
23 missing native format versions of some of the key documents in
24 the case that you might want to button up that particular
25 assertion by finding out from GoDaddy yourself and obtaining

1 substantiation that her precise e-mail accounts were the victim
2 of server crashes and not some random documents about random
3 crashes that I am not sure I could take judicial notice of
4 anyway. I am certainly not surprised that you do not want the
5 contents of these accounts to be produced to Mr. Sachs and his
6 team by way of subpoena. I am surprised that you are resisting
7 confirmation of the crashes because I would think that only
8 help your client.

9 MS. SHIN: Your Honor, our position has only been it's
10 improper at this stage. But if the inquiry is limited to
11 whether there was a crash and whether Ms. Abraham's account
12 were affected, we are OK with that, but with that limitation.

13 THE COURT: I understand.

14 I am assuming that you are still not OK with a
15 forensic inquiry even limited to the four documents, five
16 documents contained as exhibits to Mr. Sachs' letter of
17 November 30. Am I correct? I'm fine if you say otherwise, but
18 I assume you're still opposing that.

19 MS. SHIN: I am opposing that because it is not
20 indicia of fraud. To be honest, there are a lot of documents
21 that look like that, and those are cherrypicked because they
22 are not documents that they particularly like.

23 THE COURT: It's also cherrypicked because their
24 client doesn't have the twin of that document or the analogue
25 of that document. I am trying to minimize the ascription of

1 nefarious motives to both sides in this, so I understand.

2 MS. SHIN: The only thing I would add, your Honor, if
3 I may is, yes, that is true. Ms. Wasserman has not produced
4 those documents, nor has she produced many, many documents that
5 were produced by Ms. Abraham that do exist today on the server.

6 THE COURT: Does that mean you will be asking for your
7 own forensic examination of their files?

8 MS. SHIN: Not at this time, your Honor. We have no
9 indication that they were deleted at this point. But there are
10 documents that we produced that remain on the server that were
11 not produced. I think any argument that is based on
12 Ms. Wasserman being unable to produce the twin, I think doesn't
13 stand up because she has not produced many, many documents that
14 were produced.

15 THE COURT: Mr. Sachs, in reply, brief. Brief reply,
16 sir.

17 MR. SACHS: Briefly. In terms to the answer to one of
18 your Honor's questions, Exhibit 9 to my letter has the source
19 path.

20 MS. SHYMAN: For the record, it's Exhibit 9 to the
21 12/14 letter which we are happy to pass up.

22 THE COURT: That's fine. I can pull it up here.

23 MR. SACHS: It was the letter with the documents I
24 might use today.

25 THE COURT: Yes. Thank you.

1 MR. SACHS: The far right-hand corner shows the source
2 path for the -- starting with document ABR003111 were the
3 documents that were produced only in PDF format, and they were
4 foldered by Ms. Abraham in various folders, so likely the 3111
5 was foldered in an Outlook data file for her HP Global TV
6 server and it was foldered in an MOLM/January 2015 through
7 December 2016 MOLM final Wasserman (book writer widow) e-mails
8 confirming the terms.

9 So they exist either on the server saved that way or
10 on her laptop saved that way. But that's the answer to where
11 they are now.

12 The answer to how many, out of the slightly under 1500
13 documents that Ms. Abraham has produced, about 960 were
14 produced only in PDF format and about 492 were produced as
15 native e-mails.

16 What I want to say, your Honor, is I have reviewed all
17 of the e-mails, those e-mails in native format. None of them
18 have the anomaly of missing one of the quotation marks and of
19 being what I have called upside down.

20 I have also reviewed the entire Abraham production by
21 having a search done for Abraham and one or more quotation
22 marks and only these three anomalous documents are missing one
23 of the two quotation marks. They either all have no quotation
24 marks or two quotation marks. There weren't other occurrences
25 except that these three anomalous documents appeared three

1 times. And if you go back to that chart, it's 3111, 12, and
2 13. 3121, 22, and 23, and 6608, 09 and 10. That's it.

3 These weren't cherry-picked. These were the only --
4 look. Could I have missed something? Yeah. I know that I'm
5 not perfect. But I had these searches done and I reviewed the
6 searches personally and I reviewed the e-mails personally. And
7 I am representing that based on doing that, these are the only
8 three anomalous documents in the entire production and there
9 are no documents like this at all in the native e-mail portion.

10 Lastly, I do not believe we have spread these
11 allegations of fraud in the public record, and I've been very
12 careful to say indicia of fraud. I've been very careful with
13 what I have said in the letters to your Honor, but those
14 letters to your Honor were not posted to ECF.

15 THE COURT: I know. That's a concern of mine. I
16 wanted the letters to be posted to ECF, even if done in a
17 redacted fashion to remove any scurrilous allegations or any
18 sensitive materials that ought not be produced. I am not
19 pleased with getting documents only by e-mail and the public
20 not being aware of the nature of the disputes the parties are
21 having.

22 MR. SACHS: I was merely reacting to one of the two
23 letters last evening which accused me of recklessly making
24 these accusations in public. That's all I had to add, your
25 Honor.

1 THE COURT: Thank you.

2 MS. SHIN: Your Honor, on that point, if I may, it
3 sounds like you prefer these on ECF. Mr. Sachs did file a
4 letter on ECF last week asking if this conference could be done
5 in person so that he could show documents related to the
6 alleged fraud.

7 THE COURT: Yes. And?

8 MS. SHIN: I was just responding to Mr. Sachs' point.

9 THE COURT: On the issue of the GoDaddy subpoena, I am
10 permitting its issuance on the limited bases that I've been
11 discussing with Ms. Shin.

12 What I would need, as a practical matter, Mr. Sachs,
13 have you served the subpoena?

14 MR. SACHS: The subpoena was served. We have heard
15 back from GoDaddy. GoDaddy has indicated that they would not
16 even respond to it until they contacted their client, and we
17 told GoDaddy that their client was aware. I am happy to put
18 Ms. Shin in touch with them, and maybe we can work out an
19 agreed procedure for the --

20 THE COURT: I'm doubtful that you can, but I would be
21 happy if you could. If not, if they will do it by court order,
22 and you prepare an order for me that gives me the answers to
23 the first two questions. The third, you should not get those
24 documents.

25 MR. SACHS: I am not looking for the documents. But I

1 would like a schedule or at least a number because if they tell
2 me that five documents were lost in the server crash, that's
3 different than them telling me 36 or 50 or a thousand.

4 THE COURT: Agreed. But I want whatever you draft in
5 terms of requests to not call for production of the documents
6 themselves. I am obtaining from you now an undertaking that if
7 for any reason GoDaddy produces materials, you are not even
8 going to look at them, and you will immediately transfer them
9 to Ms. Shin.

10 MR. SACHS: Absolutely, your Honor.

11 THE COURT: Understood.

12 This is unusual, but I will allow it because I want to
13 understand what happened to these materials. I think we all
14 want to understand what happened to these materials. If they
15 need it by court order, prepare a court order and I will review
16 it. If they will do it based on your subpoena, then we are
17 fine. But those are the concerns I have.

18 MR. SACHS: I do think we have to modify the subpoena.
19 What I suggest, your Honor, in the first instance is, I draft a
20 revised schedule to the subpoena. I run it by Ms. Shin. I do
21 believe, because hope springs eternal, that Ms. Shin and I will
22 have no problem working out the revised paragraph 3 of the
23 subpoena, consistent with your Honor's directions. If not, we
24 will submit it the same way that Mr. Broadbent and Ms. Shin
25 submitted alternate versions for the submission to London, but

1 we will try.

2 THE COURT: On the issue of the forensic examination,
3 I am not permitting that at this time, but there is leave to
4 renew, depending on what Ms. Abraham recounts at her
5 deposition.

6 I am interested. I am not yet concerned. And I need
7 to be concerned before I permit the forensic examination. So I
8 appreciate very much the very careful tailoring that the
9 Akerman firm has done with respect to the inquiry, but I'm
10 still not going to permit it on the record that I have before
11 me. That said, depending on what Ms. Abraham recalls in her
12 deposition, I may revisit it.

13 Let me proceed to the next topic or we will be here --
14 we may well be here all afternoon.

15 Mr. Sachs, you are standing. What is it you wish me
16 to know, sir?

17 MR. SACHS: The next topic from my letter was the
18 documents relating to expenses.

19 THE COURT: I want to understand your current position
20 on that because I thought I saw a letter from you at the end
21 that said that materials have been produced and that this
22 wasn't an issue.

23 MR. SACHS: No. The materials have been produced and
24 the issue is even worse.

25 THE COURT: Wait, wait, and wait some more.

1 What is the issue that is not -- is it Mr. Nass'
2 materials? are there still fights about that? Because I
3 actually thought you sent something to me that said that you
4 weren't complaining about something and then the Cozen firm
5 said to me that you were.

6 MR. SACHS: What I said, your Honor, or what I meant
7 to say is that -- let me step back for a second.

8 THE COURT: I am looking at your letter of December
9 17. The second paragraph ends with the sentence: Three
10 documents were produced which are enclosed herewith as Exhibits
11 1 through 3, none of which admissibly support the damages
12 claim. We are back with damages.

13 MR. SACHS: What we are not back with and the reason
14 that I brought that to your Honor's attention is, there is a
15 claim in this case that Ms. Wasserman and Mr. Honig owe
16 \$1,261,388 for expenses and fees incurred in plaintiff's
17 pursuing the performance of the alleged contract with Mitch
18 Leigh because of the alleged promises by Ms. Wasserman and the
19 alleged fraud by Mr. Honig.

20 THE COURT: Slow down, counsel, but yes.

21 MR. SACHS: We served interrogatories in early October
22 and document requests in early September asking for documents
23 supporting the claims and asking for a breakout of the 1
24 million 261 and change. We never got a breakout.

25 As to documents, there are three summaries which were

1 attached as Exhibits 7 through 9 of my November 30 letter,
2 which were in the original production, all with different
3 numbers, all with different dates, and none of which matched
4 \$1,261,388.

5 We were also told by e-mail, which is Exhibit 12, part
6 of Exhibit 12 of my letter on November 30, the e-mail on
7 November 28 saying that plaintiff was, and I quote, in the
8 process of obtaining documentation of Ms. Abraham's cost and
9 fees from various sources, including Ms. Abraham's former
10 attorney, and that was Mr. Nass, and he was the person who in
11 November of 2014 filed a claim in this amount, \$1,261,388,
12 against the Leigh estate. The subpoena came back yesterday.
13 Whenever it came back, we got the documents yesterday. And
14 there was nothing in the documents that supported, as an
15 evidentiary matter, an admissible form that number. Two of the
16 documents --

17 THE COURT: Put aside admissibility for now. Is there
18 any collection of documents that, added up, gets to that
19 number?

20 MR. SACHS: No. What there is is one document, which
21 was the third exhibit to my letter of December 14. December
22 17. It's the last page.

23 THE COURT: Yesterday's letter.

24 MR. SACHS: The last page, which is ABR7254, which
25 duplicates something that's been in the production, but, as

your Honor can see, this totals 2 million 465 and change. Even if you take out the first line, which is above the line U.S. coexecutive producer, it's either too high or too little, and I don't want to make a Goldilocks joke, but it doesn't match.

We are now on December 18, a week from Christmas. This issue has been an issue since November of 2014, when they filed a claim in actually this amount with the Leigh estate.

THE COURT: Although the entity that filed the claim was not the Arnold & Porter firm, correct?

MR. SACHS: But it was Ms. Abraham who submitted a declaration to support it.

THE COURT: Of course.

MR. SACHS: What I'm saying, your Honor, is -- and since the middle of 2017, this claim has been in this case against Mrs. Wasserman and Mr. Honig. When do we get the documents that add up to that number, and where are they?

What I understood from the November 28 e-mail was, while Ms. Abraham gave -- and no one said this. What I inferred was, Ms. Abraham gave documents supporting this claim to her prior counsel and we are getting them back. So far that has not happened. So far nothing has happened.

If you look down this list, the first item on the list from what Mr. Nass' firm produced and what plaintiff has produced for us, 11 round-trip business class tickets from U.S. to London, \$125,000 and change. You know, either there are

1 receipts for that or there aren't, and the receipts will either
2 be between early February 2014 and August 2, 2014, which is the
3 time period of the alleged contract, or they won't, but we are
4 entitled to have them.

5 London hotel expenses, same thing. It's a really,
6 really high number, but where is it? Where is it and where was
7 it back in 2014? And I'm not blaming the Nass firm and I'm
8 surely not blaming Arnold & Porter, but there is a claim for a
9 million two and change against my clients without a single
10 document supporting it.

11 THE COURT: Ms. Shin or Ms. Hu, let me hear from one
12 of you.

13 Ms. Shin, are you taking the first crack at it?

14 MS. SHIN: I will, your Honor.

15 Your Honor, we are disappointed in Mr. Nass'
16 production. Right now we are determining whether we are going
17 to follow up with him.

18 In the meantime, we are working to re-create the hotel
19 where we are actually contacting the airlines and the flights
20 to be able to get them.

21 I understand that she did have a file with those
22 records which she did give to her attorney, but this was,
23 unfortunately, what came back.

24 THE COURT: Let me make sure I understand that. Did
25 it come back that way because Mr. Nass is holding these

documents as some sort of retaining lien issue?

MS. SHIN: He did. He did say he was withholding documents before he produced because of a retaining lien. However, as I understand it, he produced what he had, everything that he had.

THE COURT: How can that be? Let's back up for a moment. Do you agree with Mr. Sachs, speaking of hope springs eternal, that there is not a summary produced that comes up with the almost 1.3 million dollar figure, is it true that there is no document that explains where that number is derived from?

MS. SHIN: No, your Honor. I believe that there are summaries, I believe, that do add up to the 1.2. I have to go back to see our privileged log to see if those have been retained. Your Honor, what they are asking for are the backup receipts.

THE COURT: I understand that. But I am asking the question. Somewhere in the productions that you have made is there a document or collection of documents that adds up to this 1.2 number?

I'm asking because it's only fair if your adversaries are seeing this number to try and figure out where this number comes from. Is there a summary that has been produced that contains this number?

MS. SHIN: I am not sure, your Honor.

1 THE COURT: Again, if it's being withheld on privilege
2 grounds, then I don't fault Mr. Sachs for not finding it. It
3 is also somewhat distressing that there are all of these other
4 schedules that come up with different numbers.

5 But you are saying to me now that there was, at some
6 point in the history of the world, a file that Ms. Abraham kept
7 that had all of the receipts that she needs? You are saying as
8 well that she gave the entirety of this file to Mr. Nass and
9 his law firm for safekeeping. And you are saying that
10 irrespective of whatever retaining lien issues he has or
11 continues to have, he has given to you what he represents to be
12 the entirety of his file with respect to expenses?

13 MS. SHIN: Yes, your Honor.

14 THE COURT: That's crazy. You are telling me he lost
15 everything else?

16 MS. SHIN: No. He said he never had them, but
17 Ms. Abraham said she had them and gave them to Mr. Nass, upon
18 which he filed the estate claim for 1.2 million.

19 THE COURT: Did he tell you, and you will stop me if
20 I'm intruding on privileged communications, how that number was
21 arrived at?

22 MS. SHIN: No, I did not have that conversation.

23 THE COURT: I would like you to have that
24 conversation. I would like to understand what it is. What you
25 are telling me today is, you can't or have not produced the

1 receipts or the substantiation for the expenses because your
2 client doesn't have them, correct?

3 MS. SHIN: That is correct. But we are now obtaining
4 them from the various hotels and airlines.

5 THE COURT: And it is your expectation that you will
6 be able to re-create all of this?

7 MS. SHIN: Yes, your Honor.

8 THE COURT: We shall see.

9 Mr. Sachs, do you have an answer, sir?

10 MR. SACHS: First, Exhibit 7, 8 and 9 are the only
11 three summaries and, from my November 30 letter, they appear in
12 multiple times in the production. But those are the only
13 three.

14 The other thing I'll say, your Honor, is the only
15 place where this 1,261,388 number appears is in the submission
16 in November of 2014 of a claim against the Leigh estate and in
17 the amended complaint in this case.

18 I understand that now, which I would characterize as a
19 bit late in the day, since discovery is over in less than six
20 weeks, fact discovery, just now, for the first time, to be
21 starting to gather documents from hotels and airlines, that
22 counsel, prior counsel knew in November of 2014 they needed,
23 and current counsel knew at least in July of 2017 that they
24 needed. Because that number appears in the complaint and that
25 number appears in the amended complaint. We will be put at a

1 disadvantage even if it is just to figure out what happened and
2 why the travel was made that way and what the expenses were to
3 get these documents sometime in January.

4 THE COURT: Sir, I'm not disagreeing with you. I'm
5 understanding from Ms. Shin that she had an expectation, based
6 on conversations with her client, that Mr. Nass held the trove
7 of documents and it turns out we found out yesterday he didn't.

8 MR. SACHS: Your Honor, with all respect to the
9 efforts to retrieve those documents from Mr. Nass, and I
10 appreciate this because actually it was kind of unusual because
11 I had just asked Ms. Shyman to draft the same subpoena that
12 as -- Ms. Shyman walked into my office and said, was Susan Hu
13 listening to your conversation with me? Because we both needed
14 to serve a subpoena on Mr. Nass.

15 The question is, why a subpoena wasn't served on Mr.
16 Nass a year and a half ago. If Ms. Abraham didn't have the
17 documents and said she gave them to Mr. Nass and Mr. Nass was
18 refusing to give them back for retaining lien or other reasons,
19 why now, why serve a subpoena in late November or early
20 December when plaintiff knew she didn't have the documents and
21 she needed the documents?

22 THE COURT: Sir, add it to my list of disappointing
23 conduct in this case. I understand it, but it is where we are
24 now.

25 It is my hope and expectation that plaintiff's counsel

1 will do their very best in short order to re-create these
2 receipts. And if they can't, then that number changes. Or you
3 will tell me at some point closer to trial or summary judgment
4 practice that I should preclude references to that number and
5 maybe I will. Right now that is the state of play.

6 What is it that you want me to do?

7 MR. SACHS: What I wanted to do is to say that enough
8 is enough and this is the deadline and I get to move for
9 preclusion now. I gather, your Honor, because I am paying
10 attention, that you are not going to do that.

11 THE COURT: I'm not doing it now.

12 MR. SACHS: I would like there to be a deadline.
13 Because right now fact discovery cuts off on January 30. Right
14 now plaintiff's deposition is sometime shortly before January
15 30. And I need these documents, at the very least, a couple of
16 weeks before.

17 THE COURT: I don't think you need them a couple of
18 weeks before. You will tell me if it requires you to ask for
19 leave to have Ms. Abraham's deposition outside the January 30
20 date. No. If they are not produced in January, I don't think
21 they are getting produced. I don't think I'm allowing their
22 production. But I'm giving them January to get these documents
23 together.

24 I think asking for them to have them to you two weeks
25 or three weeks in advance of her deposition is, to me, in this

1 respect an artificial deadline. But if you tell me when these
2 documents come in that you need another week to prepare for her
3 deposition, I will listen to you.

4 MR. SACHS: Thank you, your Honor.

5 THE COURT: Sir, while you're standing, residence, is
6 that you or is that Mr. Broadbent?

7 MR. SACHS: I have one other issue, which is Marlene
8 Rue.

9 THE COURT: I thought I saw from the many letters that
10 I received that you were going to receive, if it could be
11 obtained, contact information.

12 MR. SACHS: What we have is an e-mail address, and
13 what we have been told by plaintiff's counsel is that plaintiff
14 only has the e-mail address, and I believe that that's what
15 plaintiff told plaintiff's counsel because, as I've said
16 before, I don't quarrel with anything that Ms. Shin or Ms. Hu
17 tells me. I don't. I am sure that's what they have been told,
18 but it makes no sense. It makes no sense because what the
19 November 30 letter from plaintiff's counsel to your Honor says
20 is that all plaintiff has is Ms. Rue's e-mail address and says
21 that Ms. Rue was, quote, plaintiff's independent contractor
22 assistant who has not worked with plaintiff for nearly four
23 years. That's incorrect and also makes no sense.

24 An e-mail was sent to me and was also produced in this
25 case by Ms. Abraham on October 28, 2016, which is not four

1 years ago. And copied on that was Ms. Rue by plaintiff.
2 Ms. Rue was clearly still working with plaintiff as of October
3 28, 2016.

4 The other thing, your Honor, is, even if Ms. Rue --
5 again, I have no reason to doubt that she was an independent
6 contractor executive assistant to Ms. Abraham. But independent
7 contractors get 1099s from their employer or from the person
8 with whom they are contracting. Ms. Rue was also working for
9 plaintiff for far more than a short period of time. It spans
10 the entire time at issue in this case going into late October
11 2016.

12 With all respect to what plaintiff has told her
13 counsel, her files, her tax files, some records of her
14 business, has more about Ms. Rue than just her personal e-mail
15 address. But that's the way business works.

16 THE COURT: Ms. Shin, what contact information do you
17 have today regarding Ms. Rue?

18 MS. SHIN: Only the last known e-mail address, your
19 Honor.

20 I hear Mr. Sachs. My understanding is that there was
21 no 1099 filed because she didn't make the money, enough money
22 to require it. It's not that what he's saying doesn't make
23 sense. It is all that she has.

24 THE COURT: Why is it that she is being copied on
25 e-mails in October of 2016?

1 MS. SHIN: I don't know, your Honor. But the e-mail
2 address must have still worked. That is my speculation. That
3 is my understanding. In terms of the contact information, I
4 asked her to search. The only contact information she has from
5 Ms. Rue is the last known e-mail address.

6 THE COURT: That seems like a very strange
7 relationship with one's assistant, if you can only get her by
8 e-mail. You are telling me that your client -- again, not
9 meaning to breach the privilege, your client has no other way
10 of getting in touch with Ms. Rue at all?

11 MS. SHIN: That is my understanding, your Honor. She
12 only has that e-mail address. I asked her to search, but
13 that's it.

14 THE COURT: Did she ever, ever have any other means of
15 communication with Ms. Rue?

16 MS. SHIN: I believe the office number that she used.

17 THE COURT: That is not in service anymore, correct?

18 MS. SHIN: That is my understanding, yes.

19 THE COURT: When is the last time that your client had
20 any form of communication with Ms. Rue?

21 MS. SHIN: My understanding was four years ago.

22 THE COURT: Clearly not because in October of 2016,
23 she communicated with her by copying her on the e-mail to
24 Mr. Sachs. That's just not correct, unless you want to tell me
25 that Mr. Sachs is fabricating his e-mail.

1 MS. SHIN: No, I don't think so at all. What I said,
2 and I hate to speculate, I suspect that he, out of habit,
3 copied Ms. Rue at the e-mail address she used for copying, but
4 I don't believe she was working for her at that time.

5 THE COURT: She just randomly copied her on an e-mail
6 about the very topic with which she and Ms. Rue worked
7 together?

8 MS. SHIN: I suspect that is the case, but, your
9 Honor, my understanding from the client is she hasn't worked
10 for her in four years.

11 THE COURT: Ms. Shin, I'm asking you or Ms. Hu to
12 reach back to your client to let her know that I was disturbed
13 to learn that her four-year recollection, or her last
14 recollection of the last communications four years ago is
15 belied by her inclusion on an e-mail from 2016. I am asking
16 you to ask her to think again about how recently she contacted
17 Ms. Rue and perhaps to advise your adversaries as to the
18 recency of that communication.

19 And if indeed that's all she has, then that's all she
20 has, but I don't appreciate erroneous information, and someone
21 here is in error. And I don't think at this time that it is
22 Mr. Sachs. Perhaps it is a situation where Ms. Abraham's
23 recollection needs to be refreshed. You can refresh it with
24 the e-mail.

25 Do you, Ms. Shin or Ms. Hu, have a copy of the e-mail

1 that is being referred to?

2 MS. SHIN: Your Honor, one thing I would say is, I was
3 just searching my e-mails. There was a last cell number that
4 Ms. Abraham had. It doesn't work. I didn't want to provide
5 that because it's not up to date. All we had was the e-mail
6 address.

7 THE COURT: I think I would have wanted to know that a
8 little bit earlier on.

9 MS. SHIN: I apologize, your Honor. I just have to
10 pull up a couple of e-mails about this topic.

11 MR. BROADBENT: Your Honor, I hate to interrupt on an
12 issue I did not raise, but we are interested in getting to the
13 bottom of this issue as well.

14 So I wanted to bring to the Court's attention and to
15 the parties' attention, as Ms. Shin and Ms. Hu covered with
16 their client, that the privileged log produced on December 12
17 identifies continued communications copying Mr. Rue in May of
18 2016. There are a couple of those. I think I just wanted to
19 point them in that direction as well as they continue to
20 consult with their client.

21 THE COURT: Thank you. I appreciate knowing that it
22 went to May and October of 2016. Thank you, Mr. Broadbent.

23 Mr. Sachs, am I done with you?

24 MR. SACHS: Yes. I just wanted to give the production
25 number of that e-mail.

1 THE COURT: I believe she is aware of the
2 communication she said to me.

3 MR. SACHS: I would actually like to have the cell
4 phone number that is out of service and the cell phone
5 provider, if they know who it was, because sometimes you can
6 track people down that way.

7 THE COURT: Ms. Shin, I am asking for the production
8 of that information to the defense.

9 The issue of residence, is that Mr. Broadbent's issue?

10 MR. SACHS: It's not mine.

11 THE COURT: Good answer.

12 Mr. Broadbent, on the issue of residence, I am going
13 to say this as politely as I can an hour and 15 minutes into
14 this conversation. What do you want, sir? Because you've been
15 given information, according to the Arnold & Porter firm, that
16 substantiates the allegations made. What is it that you want?
17 Do you disbelieve that she lived in London or in California?
18 Do you believe that she was actually in Florida during the
19 relevant time period? What is it that you're seeking from me?

20 MR. BROADBENT: Your Honor, speaking about residence
21 separately from the question of jurisdiction, I just wanted to
22 make sure I'm clear on what you want me to address.

23 THE COURT: You clearly want information about
24 Ms. Abraham's residence now and during the relevant time
25 period. Am I correct?

1 MR. BROADBENT: Yes, correct, your Honor.

2 THE COURT: And you saw that Ms. Shin wrote to me and
3 gave me a listing of documents regarding residence that she had
4 given or had produced in discovery. Did you see the letter,
5 sir?

6 MR. BROADBENT: Yes, your Honor. I believe I recalled
7 that letter.

8 THE COURT: Did you in fact receive the documents
9 listed in that paragraph regarding the residence of Ms. Abraham
10 at various points in time?

11 MR. BROADBENT: Your Honor, we received documents from
12 the plaintiff, but it's our position that those documents do
13 not demonstrate any residence in anyplace of Ms. Abraham.

14 THE COURT: You are not answering my question, sir.
15 Ms. Shin listed a bunch of documents that were produced to you.
16 Did you in fact receive those documents?

17 MR. BROADBENT: I'm sorry, your Honor, if I wasn't
18 clear. The first part of my sentence was intended to say, yes,
19 I received the documents identified by Ms. Shin.

20 THE COURT: You are saying they are not sufficient.
21 What is it that you seek that can't be obtained during the
22 deposition of Ms. Abraham?

23 MR. BROADBENT: Your Honor, we want to know, and I
24 hate to answer your question using the same words you have used
25 in the question. We simply want to know where she resided.

1 And what we have so far are documents suggesting that she
2 maintained offices in certain locations, that she held a
3 Florida driver's license, with which Ms. Shin advised me was
4 old, although our investigation suggested it was current, and
5 that Ms. Abraham had at various points different types of visas
6 to permit her to work in the United Kingdom, not that she had
7 any residence there.

8 Putting aside the question of jurisdiction, it returns
9 to the question of expenses and a claim by Ms. Abraham that she
10 was required to obtain a hotel in London to the tune of
11 \$185,000 at the same time she represented that she resided in
12 London.

13 What we have right now are documents saying generally
14 she might have been at certain places at certain periods of
15 time. What we don't have is any evidence that she had any
16 residence whatsoever in any of those places.

17 THE COURT: Ms. Shin, am I asking you or Ms. Hu?

18 MS. SHIN: You are asking me, your Honor.

19 THE COURT: Thank you.

20 In the year 2014, where did Ms. Abraham reside?

21 MS. SHIN: In LA, your Honor.

22 THE COURT: For the entirety of the year 2014 she
23 resided in LA?

24 MS. SHIN: Her citizenship was in LA. She resided
25 mostly in LA, but she spends a lot of time in the UK. She does

1 not have a residence in the UK.

2 THE COURT: There is no sort of little place she can
3 lay her hat whenever she is in the UK. She is always in a
4 hotel room when she is there?

5 MS. SHIN: She stays in a hotel room, she stays with
6 friends, she stays with her network.

7 THE COURT: In 2015, where did she live? What was she
8 a citizen of?

9 MS. SHIN: LA, your Honor.

10 THE COURT: 2016.

11 MS. SHIN: LA, your Honor. With fulfilling the
12 residency requirements that she was trying to build in the UK.

13 THE COURT: 2017.

14 MS. SHIN: Same thing, your Honor. LA and staying as
15 much as she can in the UK.

16 THE COURT: When you say staying as much as she can,
17 less than half the year?

18 MS. SHIN: I am not sure exactly the number of days
19 she stays there. The UK is very specific about how many days
20 you need to stay, at least six months or something that adds up
21 to that, but she does not have a residence in the UK. She
22 stays with friends, people she knows, or a women's network.
23 Not just in London; all throughout the UK.

24 THE COURT: For 2016 and '17, she was a domiciliary of
25 California. But often as she could, as often as her visas

1 permitted, she stayed in the United Kingdom, is that correct?

2 MS. SHIN: Yes, your Honor. That would be reflected
3 on her passport.

4 THE COURT: 2018, this year, what is she?

5 MS. SHIN: She is officially now a permanent resident
6 of the UK, but she still maintains her home in LA.

7 THE COURT: So she considers herself a UK domiciliary
8 as of 2018?

9 MS. SHIN: She does, your Honor. She maintains her
10 home in LA.

11 THE COURT: Not as of 2017.

12 MS. SHIN: The end of 2017, I believe.

13 THE COURT: You were about to tell me something.

14 MS. SHIN: She does have a Florida driver's license
15 which she obtained when she lived there in the '90s and maybe
16 early 2000s. The address on that home is her mother's home.
17 She has an ailing mother who lives in Florida. She doesn't
18 have any other driver's license. She found it. She made a
19 switch to keep that one.

20 THE COURT: Throughout her time in California she was
21 driving using the Florida driver's license or did she just not
22 drive?

23 MS. SHIN: That is my understanding. She doesn't have
24 any other driver's licenses. She doesn't live this Florida. I
25 am not sure why it matters. It is her ailing mother's home

1 address.

2 THE COURT: From 2014 to 2017, was she residing in the
3 same residence in LA or did she move houses?

4 MS. SHIN: I believe she stayed in the same residence.

5 THE COURT: And your concern is that given her
6 background and experiences that have happened to her, she is
7 worried about producing that address?

8 MS. SHIN: Yes, your Honor. Any of the personal
9 information that the defendant believes seems to be getting
10 out, which we are trying to cooperate, and we tried to
11 understand what his concerns were. To the extent it was
12 diversity, that I hear. I am not sure exactly why there is any
13 issue with diversity at this point, given that his clients live
14 in New York, Mr. Sachs' clients live in Arizona and New York.
15 We tried to accommodate -- yes. We did bring for your Honor's
16 in camera review the documents that I mentioned because she is
17 very upset by this and I do think -- so it doesn't go any
18 further than necessary, she asked to let you know about it.

19 THE COURT: Mr. Broadbent, why do you need more
20 information than what I have just obtained from Ms. Shin in
21 this questioning?

22 MR. BROADBENT: Your Honor, Ms. Shin's statements are
23 inconsistent with those that Ms. Abraham would have been
24 required to submit to the authorities in the United Kingdom
25 regarding her residence.

1 THE COURT: How so?

2 MR. BROADBENT: Specifically, to obtain the permits
3 that she obtained, she would have been required to represent
4 that she was away from the UK for fewer than 180 days, i.e.,
5 she resided in the UK for more than half of the year.

6 The point that I understand Ms. Shin to be making,
7 which, again, I echo Mr. Sachs, I have no comment on Ms. Shin.
8 I assume that she retained it from her client and believed it
9 to be true, but that's not consistent with the requirements of
10 the UK permits that Ms. Abraham claims that she had and the one
11 that she did produce from 2017.

12 One reason we need more information is because the
13 representations we have been given are not consistent with the
14 documents that we have been given.

15 THE COURT: Sir, I don't understand the inconsistency.
16 She has a home in California and she is trying to become a
17 permanent resident of the United Kingdom. Those are the two
18 choices. I presume today she has a home in the United Kingdom
19 and she is still not living in hotels. But according to
20 Ms. Shin, for the period of time up through the end of 2017 she
21 was staying in hotels or with friends or with a women's
22 network.

23 With respect to the issue of residence for diversity
24 purposes, she is not a New York resident or an Arizona
25 resident.

1 With respect to the question of expenses, Ms. Shin has
2 explained, and I think you can obtain this information, you can
3 confirm this information with Ms. Abraham, that there was no
4 house. It may not have been the best move or the most
5 economically efficient, but she had no residence.

6 Ms. Shin, have I misstated what you have said to me?

7 MS. SHIN: No, your Honor. That is correct.

8 THE COURT: Mr. Broadbent, I believe that is enough on
9 that issue. I appreciate you disagree with me on that issue.

10 MR. BROADBENT: Your Honor, respectfully, may I just
11 have one more moment on this?

12 THE COURT: You may. Although I really don't enjoy
13 comments that begin respectfully because it's usually followed
14 by something that evinces a lack of respect, but go ahead.
15 I'll give you your rebuttal time, sir.

16 MR. BROADBENT: Thank, your Honor. I said
17 respectfully because I did have no commentary on what you've
18 stated.

19 I wish to point out, however, that there was an issue
20 in the prior litigation regarding Mr. Honig's residence and
21 state of citizenship of which Ms. Abraham is aware and that
22 state was Florida, her allegations regarding that.

23 That issue is not resolved in that litigation, but we
24 do not want to be in a position where Ms. Abraham is later
25 permitted to argue or able to argue that in fact there was no

1 diversity here because she argued that Mr. Honig was a resident
2 and citizen of Florida.

3 The reason I raise this is because we don't have any
4 documents or any allegations specifically. We have only one
5 government-issued document stating that she had a driver's
6 license in Florida and one UK-issued document which would have
7 required her to reside in the UK for well over half the year.

8 We are concerned about this primarily because of a
9 lack of information and the fact that we do not want
10 Ms. Abraham to maintain the argument later regarding diversity
11 in the event that she is unsuccessful.

12 THE COURT: Ms. Shin, are you, on behalf of your
13 client, foreswearing any argument that Ms. Abraham was a
14 Florida resident during any relevant time period?

15 MS. SHIN: Yes, your Honor. She was not a Florida
16 resident during any time period.

17 THE COURT: I see no basis now for any claim of lack
18 of diversity. Please understand, and your client will
19 understand as well, that if we go further down this road and
20 she suddenly makes a claim, there will be consequences. You
21 are telling me she is not going to make that claim, is that
22 correct?

23 MS. SHIN: Absolutely not, your Honor.

24 THE COURT: That is fine. We are moving on. Thank
25 you.

1 Mr. Broadbent, are there additional issues that I have
2 not raised in my discussions with Mr. Sachs, additional
3 discovery issues that you have before I turn to Ms. Shin and
4 her reciprocal claims of discovery deficiencies?

5 MR. BROADBENT: A moment, your Honor, just to take a
6 look at my notes, if that may be permitted.

7 THE COURT: Of course.

8 MR. BROADBENT: Your Honor, my letter of November 30
9 identifying what we grouped in three different categories of
10 issues. You have addressed the residence and jurisdictional
11 issues. I believe we have addressed the same concerns that I
12 would have with respect to plaintiff's expenses.

13 I did also raise a concern regarding the documents on
14 plaintiff's demand for \$250 million, which we have not
15 addressed, if your Honor wishes to address that issue as well.

16 THE COURT: I do. We may be talking past each other.
17 But I think you have a concern about a document sought
18 regarding, as you put it, 50 years of Man of La Mancha
19 productions. Is that your issue, sir?

20 MR. BROADBENT: No, your Honor. The question that we
21 raised in my letter of November 30 was as to the documents that
22 Ms. Abraham relied upon in determining that her claim against
23 the estate should be \$250 million, and we have raised this
24 issue because it is a significant number that has an impact on
25 the estate and it could have an impact on the property as well

1 as for all of the parties, and we have not seen any document or
2 any facts which would support such a claim.

3 Ms. Shin has explained here in court that the only
4 documents available at the time of the complaint were a very
5 limited set of documents provided by prior counsel, which,
6 based on previous representations by her, were produced to us
7 early in this case. Again, there is nothing in there which
8 would reflect a measure of damages in an amount of \$250
9 million.

10 To the contrary, the documents the plaintiff has
11 produced, some of which were referenced in your discussion with
12 Mr. Sachs, put a number for plaintiff's expectation at least in
13 the United States at \$1 million as a coproducer. We are
14 seeking the documents --

15 THE COURT: Mr. Broadbent, isn't that the difference
16 between expenses and damages? It may be that Ms. Abraham
17 believes herself to be out of pocket just over a million
18 dollars in expenses, but I'm presuming the 250 million includes
19 what she believes to have been, rightly or wrongly, what she
20 would have made, what would have been realized had the
21 production gone forward. You want the documents that
22 substantiate that, sir, is that correct?

23 MR. BROADBENT: Yes, your Honor. And I do want to
24 draw a distinction between the \$1.2 million in expenses and a
25 line item in plaintiff's calculation of damages of November

1 2014 for her status as an above-the-line producer in the amount
2 of -- your Honor, do you still have nearby Mr. Sachs' letter of
3 November 30?

4 THE COURT: Of course.

5 MR. BROADBENT: In that letter Mr. Sachs kindly
6 attached as Exhibit 8 a calculation of plaintiff's damages to
7 date, November 13, 2014, document produced by the plaintiff.

8 THE COURT: Yes. I'm looking at it.

9 MR. BROADBENT: This document has as its top line item
10 "above the line," U.S. coexecutive producer. That's the number
11 to which I'm referring as separate from the plaintiff's claim.

12 THE COURT: Yes. It's 1 million in English pounds and
13 next to it is, I guess, an equivalency in dollars,
14 \$1,576,734.70. I do see that, sir.

15 MR. BROADBENT: Your Honor, that line item just
16 further suggests that the \$250 million has no basis. Putting
17 aside even plaintiff's personal calculation in November 2014,
18 we have not seen any document upon which plaintiff was able to
19 determine that her interest in this production would have even
20 come close to that amount. And as I recall from our initial
21 conference, your Honor was surprised at that number and many of
22 us were when we read it in the complaint because it simply
23 doesn't tie to the reality of the industry. That's why we are
24 seeking documents which Ms. Abraham used in determining that
25 that was the number to be stated in her complaint.

1 THE COURT: Ms. Shin, may I hear from you, please.

2 MS. SHIN: Yes, your Honor. I don't have anything
3 more to say than what we have in the letter other than to the
4 extent there were some analyses on damages prelitigation, those
5 have been withheld on work product grounds. We are going to be
6 producing a model. We have retained experts. There will be a
7 report and any document that's relied on will be listed in
8 accordance with the rules.

9 THE COURT: Is your expert going to substantiate a
10 \$250 million figure or something less than that, or do you not
11 know?

12 MS. SHIN: I can't say right now. I am not sure, your
13 Honor. If it's lower, we may consider amending the complaint,
14 but at this point we don't know.

15 THE COURT: Mr. Broadbent, that is your answer, sir.

16 MR. BROADBENT: Thank you, your Honor.

17 THE COURT: Mr. Broadbent, perhaps I was
18 misunderstanding something else that had been written or
19 perhaps I have you confused with Mr. Sachs.

20 Someone was concerned about being required to produce
21 information about Man of La Mancha productions over the
22 preceding 50 years and there was a reference to not all
23 productions being equal. Was that you, sir, or someone else,
24 or is that issue resolved?

25 MR. BROADBENT: Your Honor, I do have a concern about

1 plaintiff's request for financial information related to La
2 Mancha dating back a decade as well as decades beyond that. In
3 the event I wasn't clear, it was an issue that I did not raise,
4 although we did respond to the issue when raised by plaintiff
5 with respect to documents they were seeking from the estate of
6 Mr. Leigh.

7 THE COURT: Mr. Broadbent, have I discussed with you
8 all of the deficiencies in plaintiff's production that you wish
9 to bring to my attention?

10 MR. BROADBENT: Yes, your Honor.

11 THE COURT: Thank you.

12 Ms. Shin, I want to hear from you, but I also am
13 respectful of my court reporter who wishes to take a break at
14 some point. I'm anticipating that our discussion is going to
15 exceed five minutes. Is that correct?

16 MS. SHIN: I believe so, your Honor.

17 THE COURT: How best to handle this? We need a
18 five-minute for a court reporter. Do you wish to remain on the
19 line or do you wish to call back?

20 MS. SHIN: Your Honor, if there is any way to call
21 back, I would appreciate it. I'm hosting an event and speaking
22 at it. I have not been able to go and speak just yet. Is
23 there another time, sometime this afternoon?

24 THE COURT: No, there is not a time this afternoon. I
25 have conferences 2:30, 3:30, 4:00, and 5:15, so I am booked

1 until 6:00 this evening. No is the short answer. Of course, I
2 have every confidence in Ms. Hu's ability to handle this if you
3 want to leave it with her, and perhaps during the break you can
4 talk to her and communicate that information. Let me hear your
5 thoughts.

6 MS. SHIN: I am happy to take a break. How long would
7 you like, your Honor?

8 THE COURT: Ten minutes, please. We will resume in 10
9 minutes.

10 Mr. Broadbent, you are also going to call back in 10
11 minutes?

12 MR. BROADBENT: Your Honor, you broke up a little bit,
13 and I apologize. I did not hear the amount of time.

14 THE COURT: Ten minutes, sir. I am hoping you and
15 Ms. Shin can make a joint call to chambers in 10 minutes. Is
16 that doable, sir?

17 MR. BROADBENT: Absolutely, your Honor. I will be
18 available.

19 MS. SHIN: We will use the same line.

20 THE COURT: Yes. We will take a break. We will hear
21 from you both in 10 minutes. Thank you.

22 (Recess)

23 THE COURT: We resume.

24 Ms. Shin, you're on the line?

25 MS. SHIN: Yes, your Honor.

1 THE COURT: That is excellent news.

2 Ms. Shin, tell me, please, the first issue you wish to
3 address.

4 MS. SHIN: First, I would like to address the hard
5 copy documents from Ms. Leigh's office.

6 THE COURT: I want to make sure I understand this.
7 What I'm understanding to be the state of affairs is that your
8 client saw a collection, a sheaf of documents in Mr. Leigh's
9 desk. Mr. Leigh passed away. It is your understanding that
10 Mr. Honig took some of the documents but not all of them. Is
11 that correct?

12 MS. SHIN: That is my understanding, your Honor.

13 THE COURT: Do you believe that every document that
14 Mr. Honig took has been produced to you in this litigation?

15 MS. SHIN: Your Honor, I don't think so. I don't
16 know. There have been a number of objections. We are still
17 going through Mr. Honig's production. There have been a number
18 of them as late as, I believe, last week or a week before.

19 But, your Honor, I understand that he has only
20 produced documents related to this litigation at this point. I
21 am not sure what that means, but I do believe that they have
22 gone through and inserted e-mails, which I am happy about. The
23 answer is, I don't know.

24 THE COURT: Do you believe that there is a possibility
25 that Mr. Honig retrieved documents from Mr. Leigh that have no

1 relation to the subject matter of this lawsuit?

2 MS. SHIN: I'm sure that's possible, yes.

3 THE COURT: So the concern would be that Mr. Honig
4 produced all documents that he took from Mr. Leigh that are
5 relevant to this litigation.

6 I want to make sure I understand what you are seeking
7 ultimately. Is it that you are seeking re-creation of the
8 entire collection of materials that Mr. Leigh kept in that
9 drawer of his desk? I don't know how to give you the
10 confidence that you are seeking that these materials have been
11 produced.

12 MS. SHIN: Your Honor, at the end of the day, my
13 client saw a power of attorney wherever Mr. Leigh got it from.
14 It was in his offices, his office. He showed it to her when
15 she asked about, what do you mean, two-thirds? What do you
16 mean, control? And there was a power of attorney.

17 And all I have heard throughout this litigation since
18 it started was on the first day none of the attorneys could
19 answer your Honor's very point-blank question, is there a power
20 of attorney? There was no answer. Since that time I have
21 heard now that there is no such thing. This is what I want to
22 see. I am not accusing the lawyers in this case of hiding it,
23 but I have very grave concerns about whether that document
24 existed and now no longer exists.

25 THE COURT: Perhaps I should have asked a better

question at the outset. Your concern is really not with every little scrap of paper in Mr. Leigh's desk. Your principal concern is with the existence or not of the power of attorney that your client recalls seeing, correct?

MS. SHIN: Yes, your Honor. It was in his office.

THE COURT: Mr. Sachs, should I be directing this to you and not to Mr. Broadbent?

MR. SACHS: I actually think both, your Honor.

THE COURT: Let me hear from you, please.

MR. SACHS: Here is the state of play from Mr. Honig's standpoint.

One, Mr. Honig has never seen a power of attorney from his client where he was agent and then had a power of attorney later, Hellen Darion or Joe Darion in favor of Mr. Leigh, never unequivocally.

THE COURT: Let me hear that again because I want to make sure. You are saying that Mr. Honig never saw a power of attorney from either Darion to Mr. Leigh?

MR. SACHS: Yes. Unequivocally. Full stop.

THE COURT: If Ms. Abraham recalls seeing it, she saw something else?

MR. SACHS: Mr. Honig was not in that office. So whatever Mr. Leigh did or didn't pull out of a drawer. And my understanding is, from the report of the deposition, although we don't have the transcript, is that Ms. Maldonado,

1 Mr. Leigh's assistant, testified that there were no documents
2 kept in his office, but I am not swearing for Ms. Maldonado.
3 Mr. Honig wasn't there.

4 Supposedly, according to the complaint, Mr. Leigh
5 called Mr. Honig and Mr. Honig confirmed that he had the
6 original of that power of attorney in his office because he was
7 the business manager for Mr. Leigh. Unequivocally, Mr. Honig
8 said he never had such a document, and he never had such a
9 phone call.

10 That's on the existence of a power of attorney. What
11 happened after Mr. Leigh died, because I know there was some
12 back and forth about this at a conference when I made the
13 mistake of not coming, and I'm only joking about that, when Mr.
14 Leigh died, Mr. Honig was asked to make sure that documents
15 relating to La Mancha that needed to be kept were kept, and he
16 designated some of them and he took some of them.

17 THE COURT: What do you mean by, he designated some of
18 them?

19 MR. SACHS: He indicated these shouldn't be disposed
20 of. They relate to La Mancha and we need them, even if they
21 are 30 years old or 50 years old. I'm being colloquial now.
22 He was there. He was asked by the Leigh family to go through
23 the documents, and some of the documents he said you should
24 save these and some of the documents he took.

25 After the Schillings letter came in on July 11, 2014,

1 the Cozen firm asked Mr. Honig for all documents back that
2 related to Ms. Abraham, and he returned all of them to the
3 Cozen firm, No. 1.

4 No. 2, we have --

5 THE COURT: I'm sorry. Again, I need to make sure I
6 understand this. Mr. Honig, to the extent that he had these
7 documents, he took these documents from Mr. Leigh, he gave them
8 back to the Leigh estate.

9 MR. SACHS: To the Cozen O'Connor firm. Those were
10 documents relating to Ms. Abraham.

11 With respect to the remaining documents relating to
12 Man of La Mancha, with the exception, possibly, of two
13 additional documents that we were waiting to confirm our
14 understanding of them, all hard copy documents, whether from
15 Mr. Leigh's office or that Mr. Honig otherwise had, have been
16 reviewed by this firm, and not just Mr. Honig, for
17 responsiveness and have been produced.

18 THE COURT: If responsive.

19 MR. SACHS: It's documents that relate -- first of
20 all, if it has to do with Ms. Abraham, it's responsive. If it
21 has to do with the period that Ms. Shin and I have had a debate
22 about, but we have not had a meet and confer on, which is that
23 we have not gone back earlier than January 1, 2011, and we also
24 have not produced documents relating to small rights rather
25 than grand rights meaning rights to music rather than rights to

1 the entire play. We have not produced documents relating to
2 foreign productions as opposed to Broadway and London.

3 THE COURT: These are all bases of dispute?

4 MR. SACHS: I don't know that we have a dispute.

5 THE COURT: That's fine. Because you have not
6 presented to them today.

7 MR. SACHS: Correct. Because we have not had a meet
8 and confer as to any additional documents that they want from
9 those. That's what I mean by responsive.

10 We have turned Mr. Honig's office, which is small,
11 upside down for documents that are responsive to plaintiff's
12 request. But as to the issue of the power of attorney, just to
13 loop back, there never was one.

14 THE COURT: Of which --

15 MR. SACHS: -- Mr. Honig was aware. Mr. Honig never
16 was aware of one. He never took one. He never returned one.
17 To his knowledge, there never was one as between Mr. Leigh on
18 the one hand and Joe or Hellen Darion on the other hand.

19 Mr. Honig, and we have produced this, had an agency
20 agreement with Hellen Darion in -- I don't have it in front of
21 me, but in 2014, I believe, and a power of attorney from
22 Ms. Darion in 2016, and I'm doing this from memory. But those
23 have been produced. But those were on behalf of Mr. Honig, not
24 on behalf of Mr. Leigh, and they were from Hellen Darion.

25 But those documents have been produced and those

1 documents did not come from Mr. Leigh's office. Those
2 documents came directly to Mr. Honig because Mr. Honig has
3 represented, as an agent and then as a power of attorney,
4 Hellen Darion for a number of years.

5 THE COURT: To review, to the extent Mr. Honig got any
6 documents out of Mr. Leigh's desk or surrounding area, he got
7 them because they were related to Ms. Abraham or to La Mancha.
8 If they were related to Ms. Abraham, they were then not
9 necessarily returned to, but forwarded to the Cozen firm upon
10 their request. If they related to La Mancha, he may have kept
11 some of them, but they have all been produced in this
12 litigation to the extent he had them.

13 MR. SACHS: Searched and produced if responsive.

14 THE COURT: Let's be clear. I am not sure today Mr.
15 Honig could identify the source of a document.

16 MR. SACHS: That's the problem. And I will say that
17 what Mr. Honig has told me is, it's not about desk files. It's
18 about files anywhere in the apartment which was Mr. Leigh's
19 office. He went through the entire, I'll call it apartment,
20 because that's what Mr. Honig has called it, for documents
21 relating to La Mancha that should be retained. And some of
22 them he told the Leigh family to retain and some of them he
23 said, I'll take these to my office because they were business
24 related rather than creative related.

25 THE COURT: Something else, sir? Because I want to

1 talk to Mr. Broadbent.

2 Mr. Broadbent, what is your understanding of any
3 materials that may have been obtained from Mr. Leigh's office
4 upon his passing?

5 Is Mr. Broadbent on the call?

6 MR. SACHS: He was.

7 MR. BROADBENT: Your Honor. I had you on mute so you
8 didn't hear me taking a sip of water and coughing.

9 THE COURT: But now I have you, and now I know exactly
10 what you were doing before you took me off of mute.

11 Sir, what is your understanding of the disposition of
12 materials relevant to this case that were housed at one point
13 in Mr. Leigh's office?

14 MR. BROADBENT: Your Honor, I have very little to add
15 to Mr. Sachs' explanation of the facts as it is consistent with
16 our understanding, that is, that Mr. Honig came to the
17 apartment office, that is, it was an office located within what
18 was otherwise an apartment in a Trump building.

19 He reviewed documents, retained some. In fact, he
20 took some back to his office, designated others for the Leigh
21 family to retain.

22 And then at some later point, when the letter from the
23 Schillings firm arrived to the office of Cozen O'Connor, as
24 Mr. Sachs states, Cozen O'Connor asked Mr. Honig for the
25 documents relating to Ms. Abraham in this matter. We received

1 them, and we have in fact produced those documents, as I
2 advised Ms. Shin previously, and I cannot recall if it was -- I
3 think it may have been our second or third production.

4 There are a series of hard copies and scanned
5 documents which we retained electronically in a scan of the
6 printout, but these are documents that were provided to us by
7 Mr. Honig related to this matter that he had removed from the
8 office of Mitch Leigh following Mitch Leigh's death.

9 THE COURT: Mr. Broadbent, so I'm clear, is it fair to
10 say that the Cozen firm obtained documents from the office and
11 then obtained additional documents from Mr. Honig that had once
12 been kept in the office? Is that fair?

13 MR. BROADBENT: No, your Honor. I agree with the
14 second part of your statement, that is, with respect to this
15 matter, Ms. Abraham, yes, we obtained those documents from
16 Mr. Leigh's office through Mr. Honig.

17 As far as other documents in Mr. Leigh's office, the
18 only reason I said no is because I don't want to give some
19 impression that there were other documents in Mr. Leigh's
20 office that the estate retained or that the Cozen O'Connor firm
21 retained that are relevant and responsive and discoverable in
22 this case.

23 It is true that we have documents which were in
24 Mr. Leigh's possession at the time of his death, but these
25 relate primarily to his most significant interest at the time,

1 which was real estate in Jackson, New Jersey.

2 We do in fact have documents from Mr. Leigh's office,
3 and we have reviewed documents in our possession that may have
4 been in Mr. Leigh's office at the time. But there is nothing
5 additional to produce because, as Mr. Sachs explained, the
6 documents related to this matter were reviewed and selected by
7 Mr. Honig and then later delivered to us and produced by us in
8 this litigation.

9 THE COURT: Mr. Broadbent, let me explain to you why I
10 was asking the follow-up question that I did. I thought I
11 understood from Mr. Sachs' recitation of events that Mr. Honig
12 made two determinations upon being given access to Mr. Leigh's
13 office. The first was materials that he requested or
14 designated or suggested that the Leigh family keep and that is
15 something different from the documents that he retrieved. I
16 wondered if there were materials that had not been taken by Mr.
17 Honig that related to Man of La Mancha or were otherwise
18 responsive and relevant to the issues in this litigation.

19 MR. BROADBENT: The answer, your Honor, is, there were
20 documents that Mr. Honig did not take with him. We agree with
21 that. There were documents that the estate retained following
22 Mr. Leigh's death that Mr. Honig did not take.

23 Some of those documents related to Man of La Mancha.
24 But when I say related to Man of La Mancha, we are talking
25 about the 50-year history of a production that spun off musical

1 rights, rights for the music together with the lyrics; as
2 Mr. Sachs pointed out, productions across the world, amateur
3 productions, etc. So the mere fact that a document mentions
4 Man of La Mancha did not indicate that it would be relevant or
5 responsive in this case.

6 That said, we have tracked down the documents that we
7 believe the estate retained following Mr. Leigh's death and
8 reviewed those documents and determined that there was nothing
9 else responsive in this matter.

10 THE COURT: Mr. Broadbent, in one of your letters to
11 me you indicated that the compromise or the accommodation that
12 you offered to Ms. Shin is that you would produce documents
13 relating to the last West End production of Man of La Mancha,
14 which was in the '60s, and the last Broadway production of Man
15 of La Mancha, which was in 2002. But then I thought I
16 understood you to be saying that there were no such documents.

17 First of all, did you suggest to her that those were
18 materials relating to earlier productions of the musical that
19 you would consider to be relevant or at least would be willing
20 to produce?

21 MR. BROADBENT: Your Honor, our response, I believe,
22 was originally that we would be willing to produce the
23 documents related to the 2002 production of Man of La Mancha
24 which, as your Honor stated, was the last Broadway production.
25 I believe at some later point that would have included looking

1 for documents related to the West End production, but, again,
2 it was in 1968, I believe. So at no point did we represent
3 that we had them; just a willingness to determine if we might
4 have such documents.

5 THE COURT: Was that offer accepted?

6 MR. BROADBENT: I don't know if Ms. Shin has an
7 interest in the documents other than those productions. You'd
8 have to consult with Ms. Shin.

9 THE COURT: Let me ask you the question. Do you
10 have -- by you, I mean your client or your firm -- have
11 documents relating to the 2002 Broadway production?

12 MR. BROADBENT: No, your Honor.

13 THE COURT: Do you, and by you I mean your clients or
14 your firm, have documents relating to the 1960s West End
15 production?

16 MR. BROADBENT: No, your Honor.

17 THE COURT: I understand.

18 Ms. Shin, let me return to you. On the issue that
19 began what was just now a frolicking detour which concerns the
20 materials that were in Mr. Leigh's office or in his desk, I
21 have the representations from counsel for your adversaries that
22 you've gotten all that is responsive and that there is no power
23 of attorney. What else would you want me to do?

24 MS. SHIN: Your Honor, it's difficult. I think that
25 that is what counsel understands and what counsel was told.

1 It's hard for me to say, oh, maybe my client was
2 mistaken as she saw it. We have documents that specifically
3 say Mr. Leigh represented Hellen Darion. I'm a little bit
4 mystified that we are here and these documents, in my view,
5 weren't properly retained, weren't properly searched.

6 I think there are a lot of questions here about what
7 happened to them, and there is certainly an interest on the
8 part of the parties to say, everybody got a vote and that's it
9 and say this didn't exist. But my client thought -- I am not
10 sure -- I don't know what to say, your Honor.

11 THE COURT: I am just saying, I can't order them to
12 produce something that they have represented to me as officers
13 of the court their clients tell them they don't have.
14 Certainly it will be very interesting depositions of these
15 individuals, and I will be sad if it turns out they recall
16 having seen this very power of attorney they now disclaim the
17 existence of. But I've got nothing else on it, so I am going
18 to ask you, with that, to turn to the next deficiency.

19 MS. SHIN: Your Honor, it's not even a deficiency.

20 One of the issues that I would like your Honor to
21 consider and recognize, I do think that there is a basis here
22 to say that the parties had a duty to start preserving and
23 ensuring that people preserved, all people who would have
24 relevant documents, as of April 2. I am not sure where that
25 gets us in terms of the whole conversation that we had.

1 Ms. Maldonado testified that Mr. Honig did come in and
2 take some documents. She testified he didn't need any help in
3 terms of the amount. She doesn't remember the amount of
4 documents. But to the extent anything was left at the end of
5 the lease, which she wasn't very clear on when it was that they
6 had to vacate, her job was to get rid of all the documents.

7 It's hard at this point that we are looking for a very
8 key document throughout this litigation. We don't have it.

9 In terms of preservation, I do think that documents
10 weren't properly preserved. I would like a finding that
11 documents should have been preserved at least earlier than
12 July.

13 THE COURT: What is the basis for your belief? You
14 are asking me now to give you an adverse inference at trial?

15 MS. SHIN: Your Honor, yes. I take it from the way
16 you asked it that you are not inclined.

17 THE COURT: You have given me no basis to do so. I
18 don't understand the factual basis on which you want me to find
19 that they recklessly or intentionally destroyed documents.
20 What is it that makes you believe that they were on notice as
21 of April 2 that they had to retain documents?

22 I'm also not sure, what is the basis for believing
23 that there are documents that they have not preserved other
24 than your client's recollection, which, to be clear, is in
25 conflict with others, about the existence or not of a power of

1 attorney? Are there other documents out there that you believe
2 have not been maintained?

3 MS. SHIN: Your Honor, one of the things that
4 concerned me was the e-mail that I attached to the letter.
5 There is an e-mail on January 15 where Ms. Maldonado said it
6 was dictated by Mr. Leigh that Mitch represents Hellen in
7 control of the two-thirds majority of MOLM, which is
8 inconsistent with what the other parties seem to be saying now.
9 We do have other documents that say that he controls Darion.
10 It's throughout the documents, but it's inconsistent with there
11 not being a power of attorney that supports that.

12 THE COURT: One moment. On the basis of a reference
13 to someone being irritated, I am not going to have an adverse
14 inference.

15 MS. SHIN: Your Honor, it is the other e-mail, January
16 15.

17 THE COURT: Yes. I feel like we are talking past each
18 other. You are asking me to make an adverse inference because
19 of the lack of preservation after April 2. The reason why you
20 have selected the April 2 date is, I thought, because of the
21 forwarding of an e-mail from Ms. Maldonado to Mr. Honig in
22 which Ms. Abraham expressed irritation.

23 MS. SHIN: Yes, your Honor. She expressed irritation
24 to Ms. Maldonado because a third party, Manny Kladitis -- who,
25 as it turns out, he was also producing a show -- I am not sure

1 what his relationship was to Leigh. He is a third party for
2 sure, but informed her that her contact with Mitch was not
3 going to be honored.

4 Subsequent to that, it seemed that the parties' were
5 at least showing some effort to honor the contract after that.
6 But at that point I think on that there is case law that says
7 that there should be credible -- at this point e-mails like
8 this should have given them a credible basis for a potential
9 litigation.

10 THE COURT: I don't see it in this e-mail.

11 Not on the record I have before me am I going to make
12 an adverse inference with a date of April 2 of 2014.

13 I'll let you proceed to your next issue.

14 MS. SHIN: The other issue is the financial documents.
15 What I'm hearing from Mr. Broadbent today is that even though
16 they had agreed to search for and produce the 2002 West End or
17 Broadway financial data, we didn't see it and we have been
18 waiting and looking for it, so we are not getting it. They
19 don't have it.

20 THE COURT: There are two different things between we
21 are not getting it and they don't have it.

22 Ms. Shin, let me first understand that there was a
23 request that I understand to have been broader for financial
24 information. Did you accept Mr. Broadbent's offer of them
25 seeking and producing to you materials relating to the 2002

1 Broadway production?

2 MS. SHIN: We received a letter saying that that's
3 what they will look for. I think we are entitled to
4 everything. I didn't expect it. But we wanted to look at what
5 they had, that we have been waiting for it and looking out for
6 the financial data in the production.

7 THE COURT: The answer to my question is, no, you did
8 not accept it, but you simply allowed them to believe either
9 that it was or was not acceptable to you? Did you communicate
10 anything either way with respect to their offer?

11 MS. SHIN: I am not sure if it was a letter, but I
12 said we would look at it and we would meet and confer again.

13 THE COURT: I see.

14 Mr. Broadbent, did you understand that your compromise
15 position of the 2002 Broadway production had been accepted or
16 deemed acceptable by plaintiff's counsel?

17 MR. BROADBENT: No, your Honor. I didn't know what
18 plaintiff's counsel thought about it other than that she wanted
19 the documents we were offering to produce.

20 THE COURT: Whether or not she told you it was
21 acceptable, did you in fact look for any documents relating to
22 the 2002 Broadway production?

23 MR. BROADBENT: Yes, your Honor. As stated in my
24 letter of December 7, we have subpoenaed the accountants who
25 would have such records, Lutz & Carr. They were the

1 accountants on the production. We subpoenaed Lutz & Carr to
2 determine if they have any such records.

3 As I also indicated, we are making other efforts to
4 determine whether some other third party may have them so we
5 can obtain them from that third party.

6 But with respect to the Leighs and the estate, no.
7 The estate does not have these records from the 2002 production
8 of Man of La Mancha.

9 THE COURT: Ms. Shin, that is an answer. They do not
10 have the documents. They have reached out to Lutz & Carr, the
11 accountants, and other sources for those documents.

12 Anything else, Ms. Shin you want to add on that point?

13 MS. SHIN: Yes, your Honor. At Ms. Maldonado's
14 deposition she testified that I believe she started working for
15 Mr. Leigh in or about 1995. As long as she could recall, she
16 was in charge of maintaining bookkeeping for the various
17 financial accounts as part of her job at Music Makers and
18 working for Mitch Leigh. One of those accounts was Music
19 Makers and most of the data and financial information relating
20 to Man of La Mancha came in through a sheet maintained in a
21 QuickBooks program. Some of the income and financial
22 information also went into other Mitch Leigh companies.

23 She managed about, I believe her testimony was five of
24 them, and she kept them up each month. There were inputs and
25 things, people that paid and so on and so forth. We believe

1 that information is responsive to the requests 21 and 22.

2 THE COURT: This is something on which you have met
3 and conferred with Mr. Broadbent?

4 MS. SHIN: Well, yes, we have met and conferred about
5 21 and 22 quite a few times, our request for financial
6 documents showing income and revenue of Man of La Mancha.

7 THE COURT: Let me ask the question more precisely.
8 After the deposition last week, did you reach out to Mr.
9 Broadbent and say that there must be additional materials in
10 light of her testimony?

11 MS. SHIN: Your Honor, what we did was, we sent an
12 e-mail to Mr. Broadbent and Mr. Fiebach asking for the
13 production of those, and on the record I called for the
14 production of those and Mr. Fiebach asked for an e-mail.

15 THE COURT: Mr. Broadbent, you received this e-mail?

16 MR. BROADBENT: Yes, your Honor.

17 THE COURT: And have you had further discussions with
18 Ms. Shin about the responsiveness or existence of these
19 materials?

20 MR. BROADBENT: No, your Honor. We have not spoken to
21 Ms. Shin further since the e-mail regarding those documents.

22 THE COURT: You can speak with me.

23 MR. BROADBENT: Your Honor, I'm sorry. The e-mail
24 that Ms. Shin was referencing was sent yesterday morning at
25 9:30. I have, since that time, attempted to comply with the

1 three items that Ms. Hu, who sent the e-mail, requested, as I
2 determined whether they are available and whether we believe
3 they are responsive. At least with regards to the QuickBooks
4 files, we disagree. But I have since yesterday morning
5 attempted to get the facts to have an answer, but I have not
6 since that time developed those facts so I could have an
7 answer.

8 THE COURT: Sir, while we are on the phone and in
9 conference now, do you have or are you still formulating a
10 position as to whether these QuickBooks accounts or other
11 bookkeeping accounts would be responsive and would be produced
12 if found?

13 MR. BROADBENT: Yes, your Honor, I do have a position
14 on the responsiveness of those documents.

15 THE COURT: And that position is?

16 MR. BROADBENT: I was getting there very slowly.

17 THE COURT: I see.

18 MR. BROADBENT: Our position is, these documents would
19 not be responsive, at least in the years in which we appear to
20 be discussing them in the latter half of the 2000s.

21 The production of 2002, which is the last document
22 that is in our possession, in our opinion, that could possibly
23 be relevant to this dispute, again, that was in 2002. It
24 wouldn't have continued to spin off any royalties or other
25 financial information about that period of time. Ms. Maldonado

1 would not have been logging royalty payments or other things
2 received in 2012 for a production that occurred in 2002.

3 We have already agreed to produce documents related to
4 the 2002 production if we happen to identify them. If for some
5 reason we have 16-year-old QuickBooks files and those files
6 have added information from 2002, we would consider whether
7 that fell within our previous representation, but I can't say
8 because I don't have them.

9 I can say that the QuickBooks files that existed, if
10 at all, in the period of time in which we are talking about, it
11 wouldn't have contained any responsive information related to
12 Man of La Mancha.

13 I also want to know, I do have concern about having
14 this discussion regarding testimony for a witness who has not
15 in fact reviewed the transcript for its accuracy and prior to
16 the parties receiving copies of it. But I am aware she
17 testified about the existence at some point of these files. So
18 we are attempting to determine whether any file that could have
19 been referenced by Ms. Maldonado existed, but my position,
20 depending on the results, I expect my position will be, no,
21 none of these things are responsive.

22 THE COURT: At this time do you even know if they
23 exist?

24 MR. BROADBENT: No, your Honor. But I will note that
25 we have collected Ms. Maldonado's computer, as previously

1 Mr. Fiebach advised you, and are conducting searches of that
2 computer. That is one way in which the documents would be
3 identified to the extent they exist.

4 THE COURT: Based on your recollection of the
5 deposition, do you recall what was the time frame during which
6 Ms. Maldonado was maintaining these accounts?

7 MR. BROADBENT: Your Honor, I was not present at the
8 deposition. I do not have a recollection.

9 I apologize for Mr. Fiebach's absence. He is
10 attending to a personal matter that occurred starting last
11 week, and he has been in and out. I apologize to him being
12 unavailable to comment on the matter.

13 THE COURT: Yes, Ms. Shin.

14 MS. SHIN: Ms. Hu was present as well, so my best
15 recollection was that she started working there in 1995. And
16 whether it was QuickBooks, I am not sure if it was back then,
17 but this is something that she has always been in charge of
18 doing, maintaining the bookkeeping and the financial accounts
19 for the various accounts.

20 THE COURT: Not quite responsive. She was doing the
21 accounting for whom, for Mr. Leigh or for someone else?

22 MS. SHIN: Music Makers through Mr. Leigh and Abby
23 Leigh.

24 THE COURT: Is that going on to the present?

25 MS. SHIN: I don't believe so, no, not since she left

her position with Music Makers.

THE COURT: When did she leave her position with Music Makers, if you can recall?

MS. SHIN: She stayed until the last day until the office closed and the lease was up. Her best recollection was mid June 2014.

THE COURT: As much as I am enjoying a third hour of discovery disputes, I am concerned about ones in which there have not really been robust meet and confers.

With that caveat, Ms. Shin, are there other issues that you have had a meet and confer with with your adversaries that you want to bring up in this call?

MS. SHIN: Your Honor, we have not had a meet and confer since the one where we discussed all issues on the 4th, December 4, and then November 30. But other than what I heard today, I have not heard any follow-up on the Music Makers e-mail search.

THE COURT: Now you know that he received your e-mail or Ms. Hu's e-mail this morning and he is following up on it. I am not sure I'm expecting him to do more than that.

Let me ask the question more pointedly. Tell me, please, what other issues I can resolve in this call.

MS. SHIN: Your Honor, I think you have gone through all the ones that have been included in our letters.

THE COURT: Mr. Broadbent, are you still on the line,

1 sir?

2 MR. BROADBENT: I am, yes, your Honor.

3 THE COURT: I am asking you the same question. What
4 other issues can I resolve in this conversation?

5 MR. BROADBENT: No other issues at this time, your
6 Honor.

7 THE COURT: Mr. Sachs, or Ms. Shyman.

8 Let me let you talk.

9 Ms. Shyman, are there other issues that I can address
10 in this conversation?

11 MS. SHYMAN: Not at this time.

12 THE COURT: Ms. Shyman, are we going to have another
13 one of these three-hour conferences with additional discovery
14 issues, or is it possible the parties can work together for the
15 remainder of discovery in this case?

16 MS. SHYMAN: It is not my personal intention to come
17 to another three-hour discovery conference in this case, but
18 stay tuned because there is another month and a half of
19 discovery.

20 THE COURT: I will not keep you further because you
21 will be billing your clients, and I don't want to waste the
22 effort.

23 I cannot adequately express my dismay at how poorly
24 people are getting along. I'll simply wait for the next round
25 of discovery disputes and I will resolve them as well.

1 Ms. Shin or Ms. Hu, I am going to ask you to obtain a
2 transcript of this conference in case I need it to refer to for
3 our next round of discovery disputes.

4 I am going to now adjourn and wish you all happy
5 holidays. If I don't talk to you before the new year, Happy
6 New Year.

7 We are adjourned. Thank you so much.

8 (Adjourned)